

MARY JANE BAYLY

vs.

JOSIAH BAYLY.

} MARCH TERM, 1847.

[DIVORCE—WRIT OF *NE EXEAT*—CONSTRUCTION OF STATUTES.]

UPON a bill for a divorce *a mensa* and alimony, Baltimore County Court decided that the writ of *ne exeat* might be granted upon the affidavit of the wife alone, that her husband, the defendant, intended to leave the state, and depart beyond the jurisdiction of the court.

The power of the wife to make this affidavit was at one time denied, and there can be no doubt, that in the cases in which she is permitted to make it against her husband, her affidavit may be corroborated by the oaths of other persons, deposing to the acts and declarations of the husband manifesting his purpose to remove beyond the jurisdiction of the court.

A suit for a divorce commenced in Baltimore County Court, in virtue of the act of 1841, ch. 262, which conferred upon the Chancellor and the county courts, as courts of equity, jurisdiction over the subject of divorces, is within the terms of the act of 1824, ch. 196, which authorizes the removal of all equity suits then depending, or thereafter to be commenced, in any of the county courts of the sixth judicial district, to the Court of Chancery, notwithstanding no law existed, giving the courts of equity jurisdiction in cases of divorce, at the time the act of 1824 was passed.

It is well settled in England, that the Court of Chancery will not issue the writ of *ne exeat*, in cases of alimony, unless there has been a decree for alimony in the spiritual court; nor will it be granted pending an appeal from such decree, by the husband, nor for alimony *pendente lite*, nor for any other sum than that actually due for alimony and cost; but in New York the writ has been granted upon the petition of the wife *pendente lite*.

In this case, where the writ issued of *ne exeat* upon the naked, unsupported oath of the complainant, before a decree had passed establishing her right to alimony, and where such right was disputed by strong averments of the answer, and the allegation of an intention to remove from the state was positively denied by the defendant, the Chancellor granted a motion to discharge the writ, upon the case presented by the bill and answer.

[The bill was filed in the equity side of Baltimore County Court, on the 8th of May, 1847, by Mary Jane Bayly, of Baltimore city, the complainant, in which she states, that she was married to the defendant, Josiah Bayly, on the 15th of September, 1846; who then resided in Dorchester county, where she went to reside with her said husband; but, that since that time, they have removed to the city of Baltimore. That pros.